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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,455	12/08/2003	Kenneth E. Kadziauskas	27572CIP/3115	4656
7590 01/13/2005 PETER J. GLUCK ADVANCED MEDICAL OPTICS 1700 EAST ST. ANDREW PLACE SANTA ANA, CA 92799-5162			EXAMINER FARAH, AHMED M	
			ART UNIT 3739	PAPER NUMBER
DATE MAILED: 01/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/731,455	Applicant(s) KADZIAUSKAS ET AL.	
	Examiner Ahmed M Farah	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: in paragraph 6, lines 2 and 3, the word handpress is believed to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colvard et al. U.S. Patent 5,738,677 in view of Zelman U.S. Patent 5,403,307.

Colvard et al. disclose an ophthalmic apparatus and method of use for removal of the lens tissue (phacoemulsification of the lens), the apparatus comprising:

a first handpiece (irrigation probe **119**) including a laser emitting probe (optical fiber **120**) for delivering laser energy and for supplying irrigation liquid (**192**) to lens of the eye; and

a second handpiece (aspiration probe **236**) including a needle for sucking/removing emulsified lens tissue and irrigation fluid from the treatment site.

They further teach that it is known to use ultrasonically vibrating needles to remove emulsified lens materials from the treatment site (Col. 1, lines 27-36).

However, although they describe the use of ultrasonically vibrated needles to remove the ablated lens tissue, their aspiration port (aspiration probe **236**) is not vibrated. They further fail to teach a control unit for controlling the irrigation and aspiration rates.

Zelman teaches an alternative apparatus and method for softening and extracting cataractous tissue, the apparatus comprising an ultrasonically vibrated needle **212** (Fig. 8 and Col. 9, lines 51-60) and a control unit **68** for controlling the treatment energy (Col. 10, lines 54-57 and col. 12, lines 33-39). Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Colvard et al. with Zelman and use a vibrating needle as an alternative suction device, as suggested by Colvard et al., in order to remove the emulsified lens tissue. It would have been further obvious to use a control system in order to control the treatment energy,

Allowable Subject Matter

Claims 7 and 8 are allowed. The prior art of record fails to disclose, teach or suggest a method for removing lens tissue from a lens capsule as presently recited.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,623,477 to Elbrecht et al. a medical instrument for phacoemulsification of a lens tissue, the instrument comprising at least two separate handpieces.

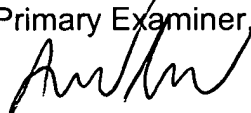
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-4724.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,
Primary Examiner, AU: 3739



January 10, 2005.